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90210 MANAGEMENT COMPANY, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JAMES R. IRWIN; SHELLI IRWIN,

Plaintiffs,

vs.

90210 MANAGEMENT COMPANY, LLC;
JANE DOE 1; DOE CORPORATIONS 1-5;
DOE ENTITIES 1-5; JOHN DOES 1-10; JANE
DOES 2-10,

Defendants.

CV

**DEFENDANT 90210 MANAGEMENT
COMPANY, LLC'S NOTICE OF
REMOVAL; EXHIBITS "A" AND "B";
CERTIFICATE OF SERVICE**

**DEFENDANT 90210 MANAGEMENT COMPANY, LLC'S
NOTICE OF REMOVAL**

TO: THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF HAWAII

Defendant 90210 MANAGEMENT COMPANY, LLC (“Defendant”) hereby submits this Notice of Removal (“Notice”), petitioning the United States District Court for the District of Hawaii for removal of the above-captioned action, Civil No. 2CCV-20-0000119, from the Circuit Court of the Second Circuit, State of Hawaii, pursuant to 28 U.S.C. §§ 1332 (diversity of citizenship), 1441, and 1446, and submits a short and plain statement of the grounds for removal, as follows:

A. Introduction

1. On May 4, 2020, Plaintiffs JAMES R. IRWIN and SHELLI IRWIN (“Plaintiffs”) filed a Complaint in the Circuit Court of the Second Circuit, State of Hawaii (Civil No. 2CCV-20-0000119) against Defendants BRE Iconic GWR Owner LLC dba Grand Wailea, Waldorf=Astoria Management LLC, Jane Doe 1, Doe Corporations 1-5, Doe Entities 1-5, John Does 1-10, and Jane Does 2-10, alleging personal injuries and damages resulting from a trip and fall incident that allegedly occurred on May 6, 2018 at Grand Wailea Resort Hotel & Spa, located at 3850 Wailea Alanui Drive, Wailea, Hawaii 96753 (“Grand Wailea Resort”). Attached hereto as Exhibit “A” is a true and correct copy of the Complaint.

2. Pursuant to the Stipulation and Agreement of Parties to Dismiss Without Prejudice Certain Defendants and Substitute in 90210 Management Company, LLC, filed in the Circuit Court of the Second Circuit, State of Hawaii on February 3, 2021, approved on March 31, 2021, and attached hereto as Exhibit “B,” 90210 Management Company, LLC was substituted in as a defendant in place of BRE Iconic GWR Owner LLC and Waldorf=Astoria Management LLC, which are no longer parties to this action.

3. Plaintiffs allege that, on May 6, 2018, “as Mr. Irwin started down the steps of” “a pedestrian bridge that spanned a water feature” while “walking back to his guest room”

“after having dinner at a restaurant” at Grand Wailea Resort, “he encountered low light conditions coupled with a stair tread that lacked dimensional uniformity causing Mr. Irwin to fall and suffer serious injury.” Exh. A ¶ 11. Per the Complaint, Mr. Irwin’s fall caused “severe injuries[,]” which in caused Mr. Irwin and his business to “suffer[] significant loss of income, earnings and revenue,” caused him to “incur[] reasonable and necessary medical expenses” and additional special and general damages, and caused Mrs. Irwin to incur loss of consortium. Exh. A ¶¶ 13, 32-36.

B. Diversity of Citizenship

4. Based upon information and belief, Plaintiffs are domiciled in Oregon. Plaintiffs allege in their Complaint that, “[a]t all times relevant herein, Plaintiffs . . . were residents of the State of Oregon[.]” Exh. A ¶ 2.

5. Defendant is a Delaware limited liability company (“LLC”) whose sole member is Hilton Illinois Holdings LLC. Hilton Illinois Holdings LLC is a Delaware LLC whose sole member is Hilton Holdings, LLC. Hilton Holdings, LLC is a Delaware LLC whose sole member is Hilton Domestic Operating Company Inc. Hilton Domestic Operating Company Inc. is a Delaware corporation with its principal place of business in Virginia. Defendant is therefore deemed a citizen of Delaware and Virginia for purposes of 28 U.S.C. § 1332(a)(1). *See Michaels v. Longs Drug Stores Cal., LLC*, No. 14-00396 ACK-KSC, 2014 WL 5488434, at *2 (D. Haw. Oct. 8, 2014) (“LLCs are citizens ‘of every state of which its owners/members are citizens.’”) (quoting *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006)).

6. All other defendants, i.e. Jane Doe 1, Doe Corporations 1-5, Doe Entities 1-5, John Does 1-10, and Jane Does 2-10, are fictitiously named. The citizenship of defendants

sued under fictitious names shall be disregarded in determining whether an action is removable under 28 U.S.C. § 1332(a). 28 U.S.C. § 1441(b)(1).

C. The Amount in Controversy is Satisfied

7. Based on the allegations in the Complaint, it is facially apparent that the alleged amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. This Court “may consider whether it is ‘facially apparent’ from the complaint that the jurisdictional amount is in controversy” or “may consider facts in the removal petition[.]” *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997).

8. Accordingly, this Court has original jurisdiction of this action under 28 U.S.C. § 1332(a), and this action is one which may be removed to this Court by Defendant pursuant to 28 U.S.C. §§ 1441(a) and 1446, given that the action is between citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

D. Process and Pleadings

9. Plaintiffs have not yet served the Complaint on Defendant. Accordingly, this Notice is timely filed within thirty days of Plaintiffs’ service of the Complaint on Defendant. 28 U.S.C. § 1446(b)(1).

10. The United States District Court for the District of Hawaii “embrac[es] the place where [the State court] action is now pending,” and therefore is the proper District Court to which this case should be removed pursuant to 28 U.S.C. § 1441(a).

11. By removing this action, Defendant does not waive any defenses available to it.

12. By removing this action, Defendant does not admit any of the allegations in Plaintiffs’ Complaint.

13. This short and plain statement of the grounds for removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant prays that the above-entitled action be removed from the Circuit Court of the Second Circuit, State of Hawaii, to the United States District Court for the District of Hawaii, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

DATED: Honolulu, Hawaii, April 1, 2021.

/s/ Thomas J. Hughes

STACY Y. MA
ANDREW K. RECKTENWALD
THOMAS J. HUGHES

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served on the following parties on the date noted below:

Served via U.S. Mail

Matson Kelley, Esq. matson@kellyandwilkins.com
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Attorneys for Plaintiffs
JAMES R. IRWIN
SHELLI IRWIN

DATED: Honolulu, Hawaii, April 1, 2021.

/s/ *Thomas J. Hughes*

STACY Y. MA
ANDREW K. RECKTENWALD
THOMAS J. HUGHES

Attorneys for Defendant
90210 MANAGEMENT COMPANY, LLC